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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,042	12/15/2003	Lester F. Ludwig	2152-3033	4753

35884 7590 10/18/2007
LEE, HONG, DEGERMAN, KANG & SCHMADEKA
660 S. FIGUEROA STREET
Suite 2300
LOS ANGELES, CA 90017

EXAMINER

WARREN, DAVID S

ART UNIT	PAPER NUMBER
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2837

MAIL DATE	DELIVERY MODE
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10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/737,042

Applicant(s)

LUDWIG, LESTER F.

Examiner

David S. Warren

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Detailed Action (attached).
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed September 14, 2007 have been fully considered but they are not persuasive.
2. **Furman does not generate "control signals."** The Applicant argues that Furman does not show "control signal" and cites the depiction in Furman's Example 3. The figure in Example 3 is provided to show the flow diagram of the audio path. This diagram is not intended to show the control path. Furman does show a pedal board used in conjunction with a rack-mounted effects system. The Examiner (a guitarist for over thirty years) maintains that, while it is possible to control a rack-mounted effects processor without foot pedals, virtually all commercially available rack-mounted effects are foot-controlled. To do otherwise would be commercially imprudent. The reason for this is that guitarists need both hands to play the instrument, the use of foot pedals allows a guitarist the ability to play the instrument and control rack-mounted effects at the same time without interruption. Furman's pedal board is a "professional guitar product." It is unimaginable that a professional guitarist would use a non-foot controlled rack-mounted effects processor. Furthermore, the Examiner questions: Why would a guitarist need a pedal board with a rack-mounted effects processor if pedals were not needed? Certainly, the control path, which is entirely different than the audio path (as Applicant correctly noted), would not be shown in the diagram of Example 3.
3. **Prima facie case of obviousness has not been made.** The Applicant argues that the Examiner has not made a prima facie case for obviousness. The Applicant has

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merely cited case law on obviousness and has failed to specifically argue the Examiner's position. Therefore, this argument is moot, the Examiner maintains his position.

4. **All claim elements are not taught.** The Applicant argues that Furman's foot pedals can be placed in "any location" none of which are predetermined. However, Furman does make the suggestion to "lay out your pedal effects in the desired order, to giving thought to such issues as...ease of access to all foot switches." This can be broadly interpreted as a generally predetermined order. The Applicant also seeks to show that Stratton only shows the predetermined location of an electrical box. However, if the electrical box is in the "upper left corner" that would leave the other areas available. Furthermore, Stratton discloses various tiers, isn't the second tier a "predetermined location"? Also, when a musician places a pedal on any board, wouldn't the musician place the pedal in preferred location, i.e., a predetermined location?

5. **Teaching away.** The Applicant argues that the "semi-permanent" arrangement of Stratton teaches away from Applicant's "readily positionable" arrangement. The Examiner does not concur. Readily positionable refers to the ease at which items may be positioned. Semi-permanent refers to a duration after items have been placed. Therefore, "readily positionable" and "semi-permanent" are not mutually exclusive terms. Thus, they do not teach away from each other. Furthermore, both "readily positionable" and "semi-permanent" are subjective terms, the Applicant has not provided any standard for comparison. For example, Furman discloses fastening Velcro to the pedals and, after use, the entire unit (with pedals) may be put into the

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case. If a musician were to use this night after night, wouldn't this be "semi-permanent"? That is, the pedal position would not be moved or repositioned. Therefore, both Furman and Stratton teach "semi-permanent" and "readily positionable" pedals.

6. ***No suggestion to combine.*** The Applicant argues that Furman "caters to those who want to reposition pedals about various locations of the pedal board." Isn't this synonymous with "readily positionable"? The Office Action is not relying on Furman to teach "pre-determined locations." The Applicant also argues that if Furman and Stratton were combined "it would obviate the purpose of Furman." The purpose of Furman is to provide a pedal board on which a user can place pedals. The use of "predetermined locations" would not obviate this purpose. The Applicant further argues that "[t]he proposed change would cause a dramatic shift in operation of Furman by forcing users to locate such controller modules in predetermined locations." The Examiner does not concur, Furman's device would operate in the same manner.

7. ***Rejection Under 35 U.S.C §103(a).*** For the reasons stated supra, this rejection is deemed appropriate.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dsw



DAVID S. WARREN
Patent Examiner